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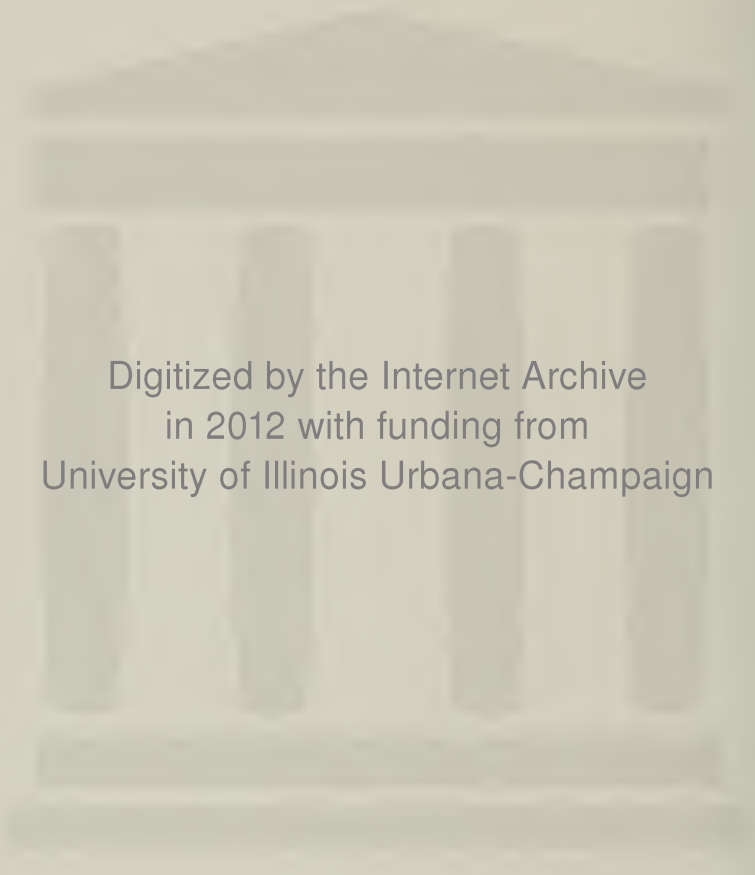
WISCONSIN DEFIES THE FUGITIVE SLAVE LAW

The Case of Sherman M. Booth

James I. Clark

The State Historical Society of Wisconsin



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The State Historical Society of Wisconsin
Madison, 1955

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JAMES I. CLARK

JOSHUA GLOVER was a runaway slave. Riding the underground railroad out of Missouri he had got safely "up North" to Racine, Wisconsin in 1852. Tall, powerfully built, he had done odd jobs, made small articles for sale, and finally settled on a job at the St. Clair and Rice saw mill. He had earned a reputation as a good worker, and was well thought of in the community.

Early in the evening of March 10, 1854, in his cabin about four miles north of Racine, Glover sat down to a card game with two Negro friends, Nelson Turner and William Alby. There had been some thawing during the day, but the sun had set at six and the night was cold. But if Glover shivered, it wasn't from the temperature outside.

He had reason to be a little jumpy. Only the night before someone had tried the door, but finding it locked had gone away. As a precaution, another fugitive who had been staying at the cabin was hurried away. Because he hadn't been bothered during his two years of freedom, Glover perhaps figured no one was looking for him. But still, one could never be sure. The Fugitive Slave Law made things hard for any runaway slave as long as he remained anywhere in the country.

The capture of Glover.

The cards had scarcely been shuffled when there was a banging on the door. Glover jumped up. "Don't open it till we know who they are!" he shouted. But Turner, without hesitating, unbolted the door.

In rushed five men, led by Benjamin S. Garland, Glover's master, armed with a pistol! Grabbing the gun, Glover tried to wrest it from him, and was slugged with a pair of handcuffs swung by Charles C. Cotton, U. S. deputy marshall. One of the other men lashed out with the butt of a whip and caught the Negro in the back. But Glover didn't go down. He swung back, hard and desperately. It took all five men to handcuff him and get him out of the cabin. Dragged to a wagon, he was thrown in and an old buffalo robe was tossed over him. Nothing was done for his badly bleeding head wound. The wagon started off into the night, bound for Milwaukee and jail, a brief stop on the return to Missouri and slavery.

William Alby had fled during the struggle. Nelson Turner was placed in the wagon, taken a short distance, and let out. It was said later that he had been the stool pigeon, that he had made a trip to St. Louis during that winter and had been seen talking with one of the captors a few days before they took Glover. It was also said that he had set up the card game as a trap. Turner probably had little to fear; he was a freedman and had papers to prove it.[1]

Reaction to the Capture

Benjamin Garland was operating within the law, but he couldn't have picked a worse place to retake an escaped slave. During the 1850's southeastern Wisconsin had a reputation for abolitionism and general anti-slavery feeling—Racine County especially. The state's first abolition society had been formed there in 1840. The Wisconsin *Aegis*, an anti-slavery newspaper, had begun publication in Racine in 1843. Many of the settlers of that region had migrated from New England and New York and had brought prejudices against slavery with them. Slavers and slave catchers were objects of very intense feeling. Whenever needed, the underground railroad in southeastern Wisconsin operated very efficiently.

Racine lived up to its reputation. News of Glover's capture was spread the next morning. Mass meetings were held and resolutions passed condemning slavery in general and slave hunters in particular. One hundred angry men caught the afternoon boat for Milwaukee.[2]

Their help probably wasn't necessary. By the time the boat docked at Milwaukee, that town was seething. Frontier justice soon took a hand in the proceedings and the place was thrown into an uproar. Right in the center of the noise was a whirlwind named Sherman M. Booth.

Booth had long been dedicated to influencing and reforming people. Born in Davenport, New York in 1812, he became a country school teacher at age fifteen. In 1835 he joined the temperance movement then sweeping the country. He mixed with the abolition movement about 1839 and soon became a loyal worker in the Liberty Party, stumping the state of Connecticut. Two years later he entered Yale University and before he graduated had organized a strong abolition society there. Booth had arrived in Milwaukee in May 1848, looking for ways to open closed minds to the light of abolition.

He found what he wanted in the Waukesha (then called Prairieville)

Sherman M. Booth (Date unknown).

American Freeman. That newspaper was violently anti-slavery. It was not highly thought of by some conservatives. The Milwaukee *Sentinel* in 1845 had sneered, "The 'nigger paper' published at odd spells at Prairieville . . . is the miserable driveling concern that is all the while whining and sniveling at the community for its lack of patronage. This sheet, which on every one of its irregular and abortive appearances froths and foams with long-drawn slush pails of stale abolition twaddle . . . is a rare political curiosity." Such a paper was just what Booth needed. He set out to change minds about abolition and put the paper on its feet.

The *Freeman* became even more loud and outspoken on all questions, even those not remotely connected with slavery. Booth's political activity switched to Free Soil, and the paper became the Wisconsin party mouthpiece. Its popularity with regular party papers didn't increase; it was generally at odds on some issue with one or more papers all the time. Not long after he acquired the paper

Booth moved his equipment to Milwaukee and there started the *Daily Free Democrat*.[3]

Booth received the news of Glover's arrest about nine o'clock Saturday morning, March 11. He headed immediately for the U. S. District Court. On the way he met Charles Cotton, who had just left the jail where Glover had been lodged. Cotton denied any knowledge of the arrest and Booth began to doubt his sources of information. He continued to the court house and talked with Circuit Judge Miller. The judge admitted issuing a warrant for a fugitive slave a few days before, but claimed he knew nothing about an arrest. Booth then checked the jail and swung into action.

He went into a huddle with some abolitionist friends. They promptly decided to call a public meeting that afternoon. Time was short; word of mouth advertising was the only solution. The printing of handbills was forgotten and men dashed away to spread the word.

At 1:40 that afternoon Booth mounted a horse. He galloped up one street and down another shouting the news of the meeting. Some thought he called on free citizens "who were not willing to be made slaves or slave-catchers to meet at the Court House at two o'clock." Others later were quite sure he had shouted, "Freemen! To the rescue! Slave-catchers are in our midst!"[4]

The People Meet and Act

People flocked to the meeting place to listen and to make speeches. Right away a president and secretary of the meeting were elected and a resolutions committee appointed.

The lawyer Byron Paine made a fiery speech declaring the Fugitive Slave Law of 1850 unconstitutional. Booth, who could speak as well as write editorials, delivered several. Since many in the audience couldn't understand English very well, A. H. Bielfeld made a rousing speech in German. Resolutions were produced pledging support to Glover in obtaining a fair jury trial. More speeches were made, another by Booth, emphasizing the necessity of trusting in the state courts to get relief from the Fugitive Law. A vigilance committee of twenty-five was appointed to see that the authorities didn't hurry Glover out of jail and back to the South. Two men were sent off to get a writ of habeas corpus to free Glover. Even with all that activity, the crowd was beginning to grow a little impatient.

About five o'clock the Racine delegation showed up, armed with warrants for the arrest of Garland and Cotton. That group was quickly brought up to the minute on events. Then Charles E. Watkins mounted the platform and declared that it was sometimes necessary for people to take the law into their own hands, or become slaves themselves. If such a time were now, Watkins shouted, it was up to the people to decide. That went over all right so Booth took the cue and one again denounced the Fugitive Slave Law. He called on the audience to do everything possible to let its sentiments be known. But he advised the people not to violate the law.

The words of Booth and Watkins were hint enough. The crowd surged forward to the jail. The outer door went down before a battering ram.

Pickaxes broke through the wall by the side of the iron-lined strongly bolted guard door. The casings were ripped out and the door removed. The cell door went next. Fifteen minutes after it started, Glover was led out and a great cheer went up. He was quickly placed in a two-horse buggy and hurried out of town. The underground railroad took him back to Racine, probably to confuse any pursuers, and there put him on a boat for Canada. The people had spoken, and acted.

Benjamin Garland, the ex-master of Glover, was arrested on a charge of assault and battery by Wisconsin officers. He was freed by Judge Miller on the grounds that a slave owner could take a fugitive to a U. S. judge or commissioner with or without a warrant. Resistance by the slave was beside the point as far as the Fugitive Slave Law was concerned. The Milwaukee *Sentinel* and the *Free Democrat* protested the decision but the joy of having Glover free overshadowed that small defeat.[5]

Support for Booth, and Trouble Too

On Monday Booth's newspaper trumpeted: "We send greetings to the Free States of the Union, that, in Wisconsin, the Fugitive Slave Law is repealed! The first attempt to enforce the law, in this state, has signally, gloriously failed! NO MORE COMPROMISE WITH SLAVERY! . . . PERISH ALL ENACTMENTS ESTABLISHING SLAVERY ON FREE SOIL!" The *Sentinel* was happy, but the editor kept his head: "We do not justify or believe in breaking laws or jails as a general thing . . . but neither laws or jails *will* stand against the people, when they think their sacred rights are involved. They evidently thought so the other day." The Madison *Daily State Journal* agreed: "While every thinking man must dislike to see the laws of the land trampled upon and the mob triumphant, he will feel a stronger emotion for which dislike is altogether too tame a word that our law-givers have passed enactments so inherently unjust that no man can or will obey them."

There was support from other places. At Union Grove, Wisconsin, a meeting was held to praise the rescue and verbally roast the federal authorities. Abolitionists in Syracuse, New York, held a meeting and sent congratulations to Wisconsin. The town of Chester, in Dodge County, called a meeting on March 26 and passed resolutions supporting Booth.[6]

Not everyone cheered. Booth himself reported that he had heard that twenty to thirty people favored taking his type and his presses and dumping them in the river. An unnamed lawyer who never had liked Booth anyway said he would give $500 to have Booth arrested and sent to the penitentiary. None of that bothered the editor of the *Daily Free Democrat*. He went right on rejoicing that Glover had been freed and continued his fight for abolition. He did run into a little trouble though.

On March 15 he was arrested by federal authorities and charged with "aiding and abetting" the escape of Glover. Others were arrested with Booth but he was the best known and the longest remembered. A hearing was set for Tuesday, March 21, before U. S. Commissioner Winfield

ANTI-SLAVE-CATCHERS'

MASS

CONVENTION!

All the People of this State, who are opposed to being made SLAVES or SLAVE-CATCHERS, and to having the Free Soil of Wisconsin made the hunting-ground for *Human Kidnappers*, and all who are willing to unite in a

STATE LEAGUE,

to defend our State Sovereignty, our State Courts, and our State and National Constitutions, against the flagrant usurpations of U. S. Judges, Commissioners, and Marshals, and their Attorneys; and to maintain inviolate those great Constitutional Safeguards of Freedom—the WRIT OF HABEAS CORPUS, and the RIGHT OF TRIAL BY JURY—as old and sacred as Constitutional Liberty itself; and all who are willing to sustain the cause of those who are prosecuted, and to be prosecuted in Wisconsin, by the agents and executors of the Kidnapping Act of 1850, for the alleged crime of rescuing a human being from the hands of kidnappers, and restoring him to himself and to Freedom, are invited to meet at

YOUNGS' HALL,

IN THIS CITY,

THURSDAY, APRIL 13th,

At 11 o'clock A. M., to counsel together, and take such action as the exigencies of the times, and the cause of imperilled Liberty demand.

FREEMEN OF WISCONSIN! In the spirit of our Revolutionary Fathers, come up to this gathering of the Free, resolved to speak and act as men worthy of a Free Heritage. Let the plough stand still in the furrow, and the door of the workshop be closed, while you hasten to the rescue of your country. Let the Merchant forsake his Counting Room, the Lawyer his Brief, and the Minister of God his Study, and come up to discuss with us the broad principles of Liberty. Let Old Age throw aside its crutch, and Youth put on the strength of manhood, and the young men gird themselves anew for the conflict; and faith shall make us valiant in fight, and hope lead us onward to victory; "for they that be for us, are more than they that be against us." Come, then, one and all, from every town and village, come, and unite with us in the sacred cause of Liberty. *Now* is the time to strike for Freedom. *Come*, while the *free* spirit still *burns* in your bosom. *Come!* ere the fires of Liberty are extinguished on the nation's altars, and it be too late to re-kindle the dying embers.

BY ORDER OF COMMITTEE OF ARRANGEMENTS.

MILWAUKEE, April 7, 1854.

Handbill advertising anti-slavery meeting in Milwaukee in April, 1854.

Smith, who was entrusted with enforcing the Fugitive State Law in the Milwaukee area.

Both sides had lined up a lot of witnesses, and it took three days to get everyone's story. There seemed to be no doubt that Booth had aided in arousing the people to storm the jail even though he had advised that no law be violated. He was unable to convince the commissioner that the crowd had acted on its own. The defense brought out the fact that no evidence had been produced to show that Glover was a fugitive slave. Byron Paine, Booth's lawyer, also contended that the Fugitive Slave Law was unconstitutional and hinted that a person couldn't break an unconstitutional law.

Before the hearing ended, Booth made a speech. The Fugitive Slave Law, slave-catching and slavery generally received many hard words. He had been arrested, Booth claimed, only because the pro-slavery people were out to get him. He was proud of his work and concluded defiantly,

> I rejoice that . . . it has been decided, by the spontaneous uprising and sovereign voice of the people, that no human being can be dragged into bondage from Milwaukee. And I am glad to say, that, rather than have the great Constitutional rights and safeguards of the people—the Writ of Habeas Corpus and the right of Trial by Jury—stricken down by this Fugitive Law, I WOULD PREFER TO SEE EVERY FEDERAL OFFICER IN WISCONSIN HANGED ON A GALLOWS.

Spectators wildly cheered and clapped. Not favorably impressed by Booth's flaming words, the commissioner threatened to have the room cleared. He then made his decision. Booth was to be held for trial before a federal court and bail was set at $2,000. The money was paid immediately and the first round of the battle was over.[7]

In relation to public opinion, Commissioner Smith was in a difficult spot. The Fugitive Slave Law was clear. Runaway slaves had to be returned to their owners. Only the testimony of the owner was needed to prove a Negro was a slave. Smith was sworn to uphold the law regardless of how anyone felt about it. All that mattered to many people, though, was that the law was cruel and unjust. It was hated in many parts of the North. That being the case, many felt that even violent means should be used to prevent its enforcement. Once again it was demonstrated that if the majority of people do not support a law, that law has little force.

The Wisconsin Supreme Court Decides

Before the federal district court got around to Booth's case, he and Paine went to Justice A. D. Smith of the Wisconsin Supreme Court for a writ of habeas corpus. In his argument Paine defnded states' rights. He went back to the clause in Article IV of the Constitution relating to the return of fugitive slaves. He argued that the clause was only a compact between the states, and its enforcement depended on the good faith of the states. Nothing in the clause gave Congress the power to pass laws forcing states to return runaways. Slave-owners had to rely on the states alone for the return of their property. If a particular state

didn't want to help capture a fugitive, it might be bad faith toward a sister state but the federal government couldn't do anything about it.

Yet Congress *had* passed laws on slavery and the federal courts had upheld them. In 1793 Congress had made a fugitive slave law requiring only that an owner swear to the identity of a slave before a judge. In 1842 the United States Supreme Court had heard a case in which a Pennsylvania Personal Liberty Law conflicted with the federal law. The Court had decided that the federal law was higher than the state.

Paine contended that the Supreme Court had been wrong and asked that the Fugitive Slave Law of 1850 be declared unconstitutional. He had three arguments: 1) Congress couldn't legislate on fugitive slaves; 2) even if it could, a person claimed as a slave had to have a jury trial; and 3) the law put power of interpreting the law into the hands of court commissioners instead of judges, and that also was unconstitutional. Justice Smith agreed with him. A little later the entire court reviewed the decision and it stood.

The majority of people in Wisconsin seemed to back the state Supreme Court. It was a victory for states' rights. More important, it was a victory over the hated Fugitive Law. In many parts of the North the reaction was the same. The New York *Tribune* carried an editorial praising "Glorious Wisconsin." Wendell Phillips and United States Senator Charles Sumner wrote Paine letters of encouragement and congratulation. A pamphlet containing Paine's argument and Justice Smith's decision had a large sale in the East.[8]

More Trouble, and a Way Out

The celebration was premature. That summer Booth was rearrested by federal officers and held for trial. Once again he applied to the Wisconsin Supreme Court for a writ. This time the court decided to wait and see. The writ was denied on the grounds that a federal court had taken over the case.

In January 1855, after fifty-eight people were examined, a jury was selected and Booth's trial begun. The defense produced as many witnesses to prove that Booth had not incited the mob as the prosecution brought forth to prove that he had. Some were not sure what he had said. The jury was instructed by Judge Miller to decide only whether Booth had broken the Fugitive Slave Law. The side issues of whether the law was unconstitutional or unjust were to be ignored. After seven hours the jury returned with a verdict of guilty. The sentence was one month in jail, a fine of $1,000 and the costs of the trial, $1,451.[9]

Howls of indignation greeted the outcome. Handbills carrying the message, "Freemen! To the Rescue!" were circulated in Milwaukee advertising a meeting on January 26. There the Fugitive Law, slave-catchers, Judge Miller, the federal government, the South and Congress came in for round after round of furious condemnation. Resolutions repeated that the law was "unconstitutional and void." and declared that ". . . we hold that it has no binding effect upon us or ours, and we repudiate all obligations to obey its unlawful and unconstitutional requirements." Another resolution

Byron Paine, Booth's lawyer.

called on the Wisconsin Legislature to do whatever possible to protect citizens of the state from the law.

"Booth meetings" were held in other parts of the state. One at Oakland resolved to aid Booth in gaining his freedom. People were urged to ". . . be prepared to resist, even at the expense of life, the encroachment of this 'sum of all villanies.'" Judge Miller was called "a tyrant . . . an old Granny and a miserable Doughface." There was a meeting at Fox Lake and similar resolutions shouted through. At Spring Grove, it was proclaimed that the prisoner

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would be freed ". . . if we have to do it at the point of a bayonet." There was no doubt about how many Wisconsin people felt.[10]

Booth and Paine were not quite so excited. They were going to the Wisconsin Supreme Court again. On Monday, January 29, a huge crowd of about 2,000 people escorted them to the railroad station. Bands played, church bells rang, cannons thundered. As the parade passed Judge Miller's house the band played "Jordan Is A Hard Road to Travel" and the crowd hissed and groaned. At Booth's house a mighty cheer went up. As the train pulled out for Madison, Booth was concluding a speech thanking the people for their strong and loyal support.[11]

At the state capital the arguments were repeated. A week later Booth returned to Milwaukee a free man. The court declared that the Fugitive Slave Law was unconstitutional and that the state had the power to free anyone illegally imprisoned. States' rights and abolitionism had triumphed over the "slaver's law."[12]

Wisconsin had committed itself against slavery. It championed states' rights, as had the South, but it stood on the other side of the slavery issue. Many people seemed ready to fight against the extension of slavery and would use every means to prevent the enforcement of the Fugitive Slave Law. And Wisconsin was a voice for much of the North.

Background of the Slavery Controversy

During the sixty-odd years since the writing of the Constitution pressures for and against the extension of slavery had slowly built up. At first the question was considered on economic and political grounds. The slave-holding states felt slavery necessary for continued expansion and production of cotton. They fought for admission of more slave states as those states would vote with the South on questions such as the tariff. The North was interested in bringing in free states as those would vote the other way.

With Calhoun's theory of nullification, slavery got mixed in with legal questions. Could a state decide if a law was unconstitutional and nullify it? And later, did the Constitution guarantee the extension of slavery? The North said "no" to both questions. The South said "yes."

Then in the 1830's slavery got mixed up with moral questions. Although abolition had an earlier start in the South, by 1835 that region had turned against it. After William Lloyd Garrison took it up in 1831, the abolition movement became bigger, more noisy, and a blazing moral issue.

With that kind of abolitionism came the underground railroad. The total number of Negroes exported from the South only amounted to about 3/100 of one per cent of the total slave population of 1850. Yet even that galled the South and encouraged the abolitionists.

By 1840 abolitionism and the railroad were active in southeastern Wisconsin. The passage of slaves through the state was not frequent, but there was enough movement to keep people interested. One of the more famous cases was that of Caroline Quarles who escaped from Missouri in 1842. She was closely pursued all the way North. There were

Capitol of the early 1850's, at Madison.

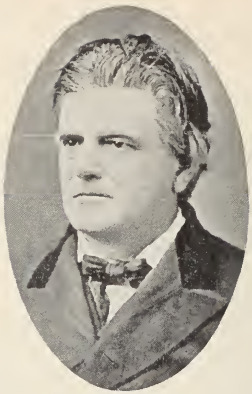
many betrayals and counterbetrayals, breathless hidings in garrets and dashings through the night before she arrived safely in Canada. People like Booth kept the state informed of such events and kept stirring the slavery question.

In the southwestern part of the state, where slaves had been brought in by Southern immigrants to work the lead mines, feeling against the institution was not so intense. Yet the second wave of immigration, beginning in the late 1820's, brought in some abolition spirit from New England. Alvin McCord Dixon, the founder of Platteville Academy, which became a teachers' college later, was an active conductor on the underground railroad. The Southerners who had brought in slaves eventually freed most of them.

Dissatisfied with the slavery stand of both the Democratic and Whig parties, the abolitionists turned to the formation of the Liberty Party in 1844. James G. Birney ran for President. Nationally the party did poorly, but Charles Durkee was elected to Congress from Wisconsin. Abolition alone proved to narrow a platform for a national third party.

There was still enough anti-slavery sentiment in the North to try another third party if the base could be widened. In the late summer of 1848 "Conscience" Whigs, Free Soil and Barnburner Democrats and Liberty men got together under the Free Soil banner. This time homestead laws, tariff for revenue only, internal improvements and other planks besides the one against the extension of slavery were in the platform. Martin Van Buren ran a poor third as Free Soil candidate for President, but in Wisconsin the party was more successful. It had the wholehearted support of Booth's newspaper and many voters. Durkee was returned to Congress and twenty members of the state legislature were elected as Free Soilers.

The slavery question was again splitting the nation. The issue was whether slavery would be allowed in lands acquired from Mexico. As far as the regular parties were concerned, the Compromise of 1850 put the question at rest. The Fugitive Slave Law helped keep it stirred up though. That law gave abolitionists something to harp on and riled many people not connected with the movement. Papers of all political parties in the Northwest blasted it. Many people refused to obey the law. Even



Nelson Dewey
First State Governor

Governor Nelson Dewey felt called upon to condemn it in his 1851 message to the Wisconsin Legislature.

The abolition societies, the Liberty and Free Soil parties had influenced parts of the North on the slavery question if they had accomplished little else. By constantly hammering on the evils of slavery and its extension, men of those parties had brought about some changes of opinion. The South saw political power in the North moving into the hands of those determined to prevent the spread of slavery. More laws like high tariffs would be passed, unfavorable to the Southern states. Maybe, thanks to abolitionists, slavery would even be outlawed. So dominant elements in the South focused attention on slavery and bitterly defended it.

The North saw political power in the South moving into the hands of those determined to spread slavery and threatening to leave the Union if it were halted. Thus things stood, as the Compromise of 1850 began to come apart.[13]

Kansas–Nebraska, End of Compromise

By 1854 all that was lacking was something around which public opinion could crystallize. The powder was dry; only a spark was needed. That was provided in January, 1854, when Stephen A. Douglas introduced the Kansas–Nebraska Bill. Douglas merely wanted to profit from the building of a railroad, and maybe get to be President of the United States. For both projects he needed Southern support. He had no idea of the reaction his scheme would touch off.

The country squared away, North against South. Southern rights were involved, the right of slavery to follow the flag. The North saw the end of compromises and no end to the extension of slavery. Eloquent testimony to feeling in Wisconsin was the effigy found hanging on the capitol square on March 30. On it was a sign: "Stephen A. Douglas—The Arnold of '54—the Would-Be President of '56." The rescue of Glover and the state court's decision in favor of Booth were part of Wisconsin's answer to the Bill, as well as to the Fugitive Slave Law.

On May 25, the Kansas–Nebraska Bill became law. Many people in the North were convinced that their representatives in Congress had sold them out. Booth proclaimed in his paper, "Let meetings be held all over the free States to take counsel and organize for prompt and efficient action, for a determined resistance to the Slave Power." Passage of the law would prove to be "the signal of a revolution which shall sweep away Northern traitors out of Congress, and out of public life, and damn them to an infamy of fame." Booth might have had his words a little mixed up, but there was no doubt about his meaning.[14]

Toward the end of February 1854, A. E. Bovay, a former Whig and good friend of Horace Greeley, had called for a meeting in a schoolhouse in Ripon. The purpose was to do something about the Kansas–Nebraska Bill. On March 20, a second meeting was held. At that gathering the Republican party was born. In Ohio and Indiana conventions were held the same month. The party got under way in Illinois a year later. Michigan organized in March, a few days after Wisconsin's first meeting. Something was going to be done about slavery.[15]

The Booth case was not ended, but it had served a purpose. It had dramatized the slavery issue. The people of Wisconsin had shown that they would not obey a federal law that they thought was wrong. The case had encouraged anti-slavery groups all over the North. It had given a good boost to the early success of the Republican party in Wisconsin, and perhaps nationally.

The U. S. Supreme Court Decides, and Booth Fights Back

States' rights played a large part in Wisconsin politics until 1860. The Republicans met in 1857 to select a candidate for the U. S. Senate. A resolution was passed upholding the Wisconsin Supreme Court in its decision on the Fugitive Slave Law. The resolution further asserted the right of state courts to judge cases involving states' rights. Candidates for nomination had to agree to those ideas. Later Byron Paine ran for the

Two views of Milwaukee of the 1850's.

State Supreme Court on an anti-slavery platform and won easily.

Wisconsin passed a Personal Liberty Law in 1857. County district attorneys were to "protect, defend and procure to be discharged every person arrested as or claimed to be a fugitive slave." Two witnesses were required to prove a person a slave. Any person representing a free person as a slave was to be fined $1,000. A jury trial and free legal aid were to be provided.[16]

On Booth, however, the United States Supreme Court was to have the final word. The court took over the case in April 1855, and asked the Wisconsin court for a record of its proceedings. The request was ignored. As far as Wisconsin was concerned, the case was settled. The higher court had to use a copy of the record and the case wasn't heard until December 1858.

The court made short work of the Wisconsin decision. It said that a writ of habeas corpus issued by a state court had no authority in a federal court. A U. S. marshall holding a prisoner was subject only to the federal courts. The Fugitive Slave Law was constitutional. No state court could interfere with the proceedings and judgment of a U. S. court. Wisconsin was ordered to reverse it decision and return Booth to federal officers. The state refused and Booth was rearrested by a U. S. marshall on March 1, 1860.

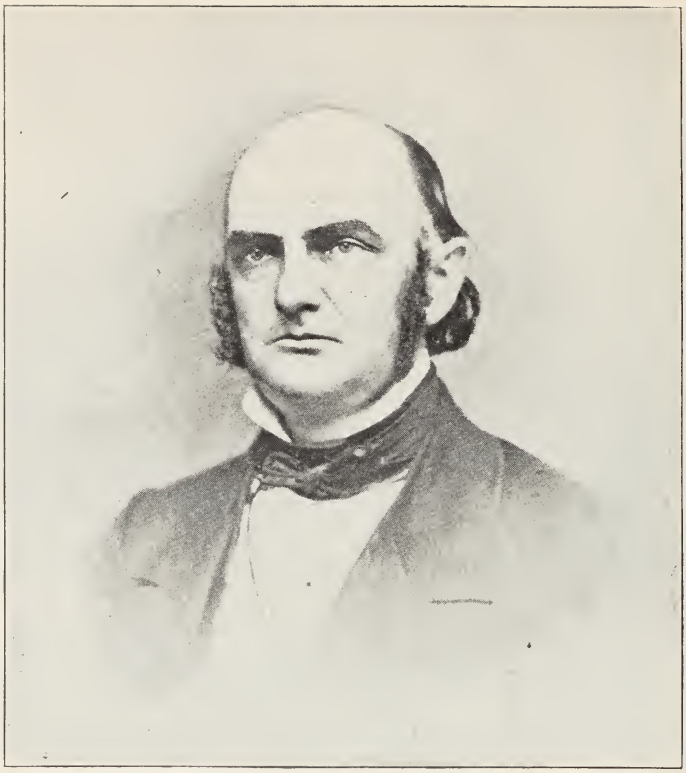
From the Milwaukee jail Booth tried for another writ. This time it was refused. Byron Paine, recently elected to the court, felt he couldn't rule on the application. Another justice, named Dixon, considered the Fugitive Slave Law constitutional. The three-man court was split.[17]

Because he hadn't paid the $1,451 he owed the government, Booth stayed in jail. He wrote a few letters and editorials denouncing the federal courts and the shoddy treatment he had received. He praised states rights and the Wisconsin courts and encouraged the continued fight against slavery. He had many readers.

On July 4, 1860, posters were scattered about Milwaukee calling "Freemen! to the Courthouse at 2 o'clock. Booth will address the crowd from his window in the jail." For some reason Booth didn't speak, but his address was read outside the jail by O. H. LaGrange of Ripon, who added a few remarks of his own. Two days later the Ripon *Times* called on people to do something to aid Booth. "We have had speeches enough," said the *Times*. "We want money and muscle." The muscle was not long in coming.

Shortly after noon on August 1, ten men entered the Milwaukee Courthouse. One of them showed the jailer a card of admission to see Booth. While the jailer was studying the card, he was seized. His keys were taken, the cell door unlocked, and Booth grabbed a carriage out of the city. The jailer was tossed into the cell instead. It was all done very quietly. Booth caught a train to Waupun, where he stayed with Hans C. Heg, who was, interestingly enough, the warden of the state penitentiary there.

A few days later Booth was escorted to Ripon where he spoke to a crowd in the city hall. The long arm of the federal law reached out in the person of Frank D. McCarty, deputy



Alexander W. Randall, Wisconsin governor, 1858–1862, later Postmaster General of the United States.

marshall from Fond du Lac, but missed. He and his two assistants were rapidly and roughly escorted from the hall amid cries of "Shoot him!" "Kill him!" "Hang him!" The pro-Booth audience then resumed listening to speeches. Before the meeting ended, Booth slipped away for a few days rest at the home of O. P. Reed, on Green Lake Prairie.

There was one small voice of opposition to all those proceedings. The Ripon *Star* blasted the rescue of Booth by ". . . the depraved, the abandoned, the reckless, supporters of grog-shops, the gaming table, or other dens of vice. The *Star* influenced few people, however.

Toward the end of the month Booth traveled to Pickett's Station and stayed with the Pickett family. There Deputy Marshall McCarty tried again. This time a number of farmers armed with shotguns and pitchforks stood in his way. The deputy marshall, understandably disgusted, went back to Fond du Lac and stayed there.

The rest of the month and during September Booth stayed out of sight.

Interest in him was overshadowed by the speeches of Abraham Lincoln and the coming November elections and the Southern threats of secession. A reward of $100 had been offered for Booth's capture, but there were no takers.

On October 8 the fugitive came out of hiding and the chase ended. While he was returning from addressing a political meeting at Berlin, Booth was captured by federal officers and taken back to Milwaukee. There he stayed until the following year.[18]

The Civil War Ends the Case

In March 1861, a new President was coming into the White House. Republicanism had won, the South was seceding, the Civil War had come. Booth was a secondary issue. Through the help of some friends he was pardoned and the fine remitted. It was one of the last acts of President Buchanan before he turned the government over to Lincoln.

Throughout the controversy over Booth and the Fugitive Slave Law, Wisconsin had made its position clear. It was against slavery; it was for states' rights. It had adopted the theory that if a state didn't like a federal law, it could refuse to obey it, much as had South Carolina twenty-five years before. It had used the theory of nullification a little differently than John C. Calhoun would have, but the end result was the same.

However, refusing to obey a federal law was one thing, tampering with the Union was another. Wisconsin had no use for secession. Alexander W. Randall, governor, declared in 1861: "A state cannot come into the Union when it pleases and go out when it pleases. Once in it must stay in until the Union is destroyed. Secession is revolution. A revolution is war: war against the Government of the United States is treason."[19] Most of the people of Wisconsin stood solidly behind him.

NOTES

[1] Story on Booth capture from Racine *Daily Morning Advocate,* March 12, 13, 1854; Milwaukee *Sentinel,* Milwaukee *Daily Free Democrat,* May 22, 1854.

[2] Vroman Mason, "The Fugitive Slave Law in Wisconsin With Reference to Nullification Sentiment," State Historical Society of Wisconsin *Proceedings, 1895*:121; Kate E. Levi, "The Wisconsin Press and Slavery," *Wisconsin Magazine of History,* 9:423–34 (June, 1926), 423–25; Racine *Daily Morning Advocate,* March 12, 1854.

[3] Chicago *Chronicle,* November 1, 1896; Milwaukee *Sentinel,* August 7, 1845; Theodore Smith, "The Free Soil Party in Wisconsin," State Historical Society of Wisconsin *Proceedings, 1894*: 150–51.

[4] Milwaukee *Sentinel,* March 22, 1854; Milwaukee *Daily Free Democrat,* March 13, 22, 1854.

[5] Milwaukee *Daily Free Democrat,* March 14, 1854; Milwaukee *Sentinel,* March 16, 1854.

[6] Mason, "Fugitive Law," 126–27.

[7] Milwaukee *Sentinel,* Milwaukee *Daily Free Democrat,* March 22–24, 1854.

[8] Joseph Schafer, "Stormy Day in Court, The Booth Case," *Wisconsin Magazine of History,* 20:89–110 (September, 1936), 89–106; Mason, "Fugitive Law," 129–30.

[9] Milwaukee *Sentinel,* Milwaukee *Daily Free Democrat,* January 11, 12, 13, 1855.

[10] Mason, "Fugitive Law," 134–38.

[11] *Ibid.,* 136.

[12] *Ibid.,* 136–37.

[13] Background on the slavery controversy from Theodore Smith, *The Liberty and Free Soil Parties in the Northwest* (New York, 1897); John S. Tilley, *The Coming of the Glory* (New York, 1949); John N. Davidson, "Negro Slavery in Wisconsin and the Underground Railroad," Parkman Club Publication No. 18 (Milwaukee, 1897).

[14] Milwaukee *Daily Free Democrat,* April 1, May 26, 1854.

[15] Alex M. Thomson, *A Political History of Wisconsin* (Milwaukee, 1900), 109–13; James L. Sellers, "Republicans and States' Rights in Wisconsin," *Mississippi Valley Historical Review,* 17:213–29 (September, 1930).

[16] Mason, "Fugitive Law," 140–44.

[17] *Ibid.,* 138–40; Schafer, "Stormy Day," 106–10.

[18] George B. Carter, "The Booth War in Ripon," State Historical Society of Wisconsin *Proceedings, 1902*: 161–72; Thomson, *Political History,* 96–109.

[19] Reuben G. Thwaites, ed., *Civil War Messages and Proclamations of Wisconsin War Governors* (Madison, 1912), 43–44.

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Two articles on slavery by John N. Davidson, both covering about the same ground are, "Negro Slavery in Wisconsin," State Historical Society of Wisconsin, *Proceedings, 1892*:82–86; and "Negro Slavery in Wisconsin and the Underground Railroad," Parkman Club Publication No. 18 (Milwaukee, 1897).

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